a

RE ANSARI ABDULLAH, EX P THE OFFICIAL ASSIGNEE (MALAYSIA)

HIGH COURT SABAH & SARAWAK, SANDAKAN
LINTON ALBERT J
[BANKRUPTCY PETITION NO: K32-1991]
14 MAY 2005

b

BANKRUPTCY: *Adjudication order - Appeal against - Application made by Official Assignee - Whether properly grounded - Whether appeal allowed*

c On an application made by the Official Assignee under r. 151 of the Bankruptcy Rules 1969 and s. 24(3) Bankruptcy Act 1967, the deputy registrar made an adjudication order against the debtor. Hence, the debtor's appeal.

Held (allowing the appeal):

d **[1]** The resolution that the debtor be adjudged a bankrupt was passed six years before the application was made. It was also admitted that since the resolution was passed right up to the time the adjudication order was made several proposals for composition were made and adjournment was also granted to the debtor at a creditor's meeting for new proposals to be made. All the proposals, were, however, unacceptable to the creditors. In these e circumstances, the application before the deputy registrar was not properly grounded, based as it was on a resolution which was patently ineffectual, having been negated by events which occurred during the six years since it has passed. The application was ill-founded and therefore fatally flawed. (pp 455 g-i & 456 a)

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Case(s) referred to:
Re Dato' Mohamed Pilus Yusoh, ex p Southern Bank Bhd [1988] 1 MLJ 536 ***(refd)***

Legislation referred to:
Bankruptcy Act 1967, s. 24(3)
g Bankruptcy Rules 1969, r. 151

For the judgment creditor - David Wong; M/s Peter Lo & Co
For the director general of insolvency - Sayani Mohd Nor
For the judgment debtor - Ridwandean Borhan; M/s Ansari & Co

h *Reported by Suhainah Wahiduddin*

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JUDGMENT

Linton Albert J:

On an application made by the official assignee under r. 151 of the Bankruptcy Rules 1969 and s. 24(3) Bankruptcy Act 1967, the learned deputy registrar made an adjudication order against the debtor on 6 July 2004. The debtor is now appealing against that decision of the learned deputy registrar.

The official assignee's application was made on 27 May 2004 and was supported by a report dated 24 June 2002. The report of the official assignee was as casual as it was brief, containing four paragraphs in all. Paragraph 1 states that a receiving order was made against the debtor on 8 January 1993 and para. 2 states that the receiving order was published in the "Daily Express"; para. 3 contains the resolution passed by the creditors on 27 June 1998 to the effect that the debtor be adjudged a bankrupt and that the official assignee do apply to the court therefore. Lastly, in para. 4 it is stated that the official assignee accordingly applies to the court under s. 24(3) of the Bankruptcy Act 1967 to adjudge the debtor a bankrupt.

Learned Federal Counsel, Puan Sayani binti Mohd Nor argued that since it had been resolved that the debtor be adjudged bankrupt the learned deputy registrar was correct in granting the adjudication order because the words of s. 24(3) of the Bankruptcy Act 1967 are peremptory. Section 24(3) of the Bankruptcy Act 1967 is as follows:

> Where a receiving order is made against a debtor, if the creditors at the first meeting or any adjournment thereof resolve by ordinary resolution that the debtor be adjudged bankrupt or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not accepted or approved in pursuance of this Act within fourteen days after the conclusion of the examination of the debtor or such further time as the court allows, the court shall adjudge the debtor bankrupt.

While I have no problem accepting the view expressed by the learned Federal Counsel, I do not think that this appeal can simply be disposed of on that basis. The resolution was passed some six years before the application was made and it was also admitted that since the resolution was passed right up to the time the adjudication order was made several proposals for composition were made and adjournment was also granted to the debtor at a creditors' meeting for new proposals to be made. All the proposals were, however, unacceptable to the creditors. In these circumstances, I am of the view that the application before the learned deputy registrar was not properly grounded, based as it was on a resolution which was patently ineffectual, having been

negated by events which occurred during the six years since it was passed. The application was ill-founded and therefore fatally flawed. In *Re Dato' Mohamed Pilus bin Yusoh, ex p Southern Bank Bhd* [1988] 1 MLJ 536 at p. 540 Peh Swee Chin, J had this to say:

> ... Section 6 of the Bankruptcy Act 1967 tends to support my view, though indirectly, by providing that for any sufficient cause (not specified therein), the court may dismiss a petition.

Hence, the appeal ought to be allowed on this ground alone and I do not, therefore, consider it necessary to determine whether the extreme hardship the debtor would encounter as an advocate and solicitor if the order of adjudication is maintained without any real benefit to the creditors would be viewed favourably in this appeal nor do I think it necessary to express any view on the speculative opinion regarding the status of the debtor as an advocate and solicitor if the decision of the learned deputy registrar is maintained.

In the circumstances, the appeal is allowed and the adjudication order made against the debtor is hereby set aside. There shall be nor order as to costs.